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Statement of the case.

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essary consequence, from the right to exclude altogether. The State of Wisconsin has made it a condition of admission that the company shall submit to be sued in the courts she has provided for the settlement of the rights of her own citizens. That is no more than saying that the foreign company must, for the purposes of all litigation growing out of the business transacted there, renounce its foreign citizenship and become *pro tanto* a citizen of that State. There is no hardship in this, for it imposes no greater burden than rests upon home companies and home insurers.

This insurance company accepted this condition, and was thus enabled to make the contract sued upon. Having received the benefits of its renunciation the revocation comes too late.

The State court had jurisdiction to try the question of citizenship upon the petition to transfer. Upon the facts I think it was authorized to find that the company was, for all the purposes of that action, a citizen of Wisconsin, and refuse the order of removal.

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SPROTT v. UNITED STATES.

1. A purchaser of cotton from the Confederate States, who knew that the money he paid for it went to sustain the rebellion, cannot in the Court of Claims recover the proceeds, when it has been captured and sold, under the Captured and Abandoned Property Act.
2. The moral turpitude of the transaction forbids that in a court of law he should be permitted to establish his title by proof of such a transaction.
3. The acts of the States in rebellion, in the ordinary course of administration of law, must be upheld in the interest of civil society, to which such a government was a necessity.
4. But the government of the Confederacy had no existence except as organized treason. Its purpose while it lasted was to overthrow the lawful government, and its statutes, its decrees, its authority can give no validity to any act done in its service or in aid of its purpose.

APPEAL from the Court of Claims.

The act known as the Captured and Abandoned Property Act, passed March 12th, 1863,\* providing for "the collection

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\* 12 Stat. at Large, 820.

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of abandoned property, &c., in the insurrectionary districts within the United States," enacts that any person claiming to have been the owner of any such abandoned or captured property may, within a time specified in the act, prefer his claim to the proceeds thereof in the Court of Claims, and on proof to the satisfaction of the court: (1) of his ownership; (2) of his right to the proceeds thereof; and (3) that he has never given any aid or comfort to the rebellion, receive the residue of such proceeds, after deducting any purchase-money which may have been paid, &c.

Under this act one Sprott, a resident of Claiborne County, Mississippi, filed a claim in the Court of Claims to the proceeds of certain cotton. That court made the following finding of facts:

At different times during the years 1864 and 1865, large quantities of cotton were purchased by the agents of the Confederate States for the treasonable purpose of maintaining the war of the rebellion against the government of the United States. Of cotton thus purchased by various agents in Claiborne County, Mississippi, three hundred bales were sold to the claimant by one agent, in March, 1865, for ten cents a pound, in the currency of the United States. The sale was made by the agent as of cotton belonging to the Confederate States, and it was understood by the claimant at the time of the purchase to be the property of the rebel government, and was purchased as such. The agent had been specially instructed by the Confederate government "to sell any and all cotton he could for the purpose of raising money to purchase munitions of war and supplies for the Confederate army;" but the purpose of the sale was not disclosed to the claimant, whose purpose was not to aid the Confederate States, buying the cotton at its market value and regarding it as a mere business transaction of "cotton for cash." The cotton was delivered to him at the time when the money was paid, he then being a resident of Claiborne County, within the Confederate lines.

The cotton was captured in May, 1865, and the proceeds, or some portion thereof are in the treasury.

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And upon these facts the Court of Claims found, as conclusions of law—

1. That the government of the Confederate States was an unlawful assemblage, without corporate power to take, hold, or convey a valid title to property, real or personal.

2. That the claimant was chargeable with notice of the treasonable intent of the sale by the Confederate government, and that the transaction was forbidden by the laws of the United States, and wholly void; so that the claimant acquired no title to the property which was the subject of suit.

The court therefore decreed against the claimant, and from its decree he brought the case here.

*Messrs. George Taylor and R. M. Corwine, for the appellant;  
Mr. C. H. Hill, Assistant Attorney-General, contra.*

Mr. Justice MILLER delivered the opinion of the court.

The Court of Claims, upon the facts which it found, decided as conclusions of law—

1. That the government of the Confederate States was an unlawful assemblage without corporate power to take, hold, or convey a valid title to property, real or personal.

2. That the claimant was chargeable with notice of the treasonable intent of the sale by the Confederate government, and that the transaction was forbidden by the laws of the United States, and wholly void, so that the claimant acquired no title to the property which is the subject of suit.

We do not think it necessary to say anything in regard to the first proposition of law laid down by that court. Whether the temporary government of the Confederate States had the capacity to take and hold title to real or personal property, and how far it is to be recognized as having been a *de facto* government, and if so, what consequences follow in regard to its transactions as they are to be viewed in a court of the United States, it will be time enough for us to decide when such decision becomes necessary. There is no such necessity in the present case.

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We rest our affirmance of the judgment of the Court of Claims upon its second proposition.

It is a fact so well known as to need no finding of the court to establish it, a fact which, like many other historical events, all courts take notice of, that cotton was the principal support of the rebellion, so far as pecuniary aid was necessary to its support. The Confederate government early adopted the policy of collecting large quantities of cotton under its control, either by exchanging its bonds for the cotton, or when that failed, by forced contributions. So long as the imperfect blockade of the Southern ports and the unguarded condition of the Mexican frontier enabled them to export this cotton, they were well supplied in return with arms, ammunition, medicine, and the necessities of life not grown within their lines, as well as with that other great sinew of war, gold. If the rebel government could freely have exchanged the cotton of which it was enabled to possess itself, for the munitions of war or for gold, it seems very doubtful if it could have been suppressed. So when the rigor of the blockade prevented successful export of this cotton, their next resource was to sell it among their own people, or to such persons claiming outwardly to be loyal to the United States, as would buy of them, for the money necessary to support the tottering fabric of rebellion which they called a government.

The cotton which is the subject of this controversy was of this class. It had been in the possession and under the control of the Confederate government, with claim of title. It was captured during the last days of the existence of that government by our forces, and sold by the officers appointed for that purpose, and the money deposited in the treasury.

The claimant now asserts a right to this money on the ground that he was the owner of the cotton when it was so captured. This claim of right or ownership he must prove in the Court of Claims. He attempts to do so by showing that he purchased it of the Confederate government and paid them for it in money. In doing this he gave aid and assistance to the rebellion in the most efficient manner he

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possibly could. He could not have aided that cause more acceptably if he had entered its service and become a blockade-runner, or under the guise of a privateer had preyed upon the unoffending commerce of his country. It is asking too much of a court of law sitting under the authority of the government then struggling for existence against a treason respectable only for the numbers and the force by which it was supported, to hold that one of its own citizens, owing and acknowledging to it allegiance, can by the proof of such a transaction establish a title to the property so obtained. The proposition that there is in many cases a public policy which forbids courts of justice to allow any validity to contracts because of their tendency to affect injuriously the highest public interests, and to undermine or destroy the safeguards of the social fabric, is too well settled to admit of dispute. That any person owing allegiance to an organized government, can make a contract by which, for the sake of gain, he contributes most substantially and knowingly to the vital necessities of a treasonable conspiracy against its existence, and then in a court of that government base successfully his rights on such a transaction, is opposed to all that we have learned of the invalidity of immoral contracts. A clearer case of turpitude in the consideration of a contract can hardly be imagined unless treason be taken out of the catalogue of crimes.

The case is not relieved of its harsh features by the finding of the court that the claimant did not *intend* to aid the rebellion, but only to make money. It might as well be said that the man who would sell for a sum far beyond its value to a lunatic, a weapon with which he knew the latter would kill himself, only intended to make money and did not intend to aid the lunatic in his fatal purpose. This court, in *Hanauer v. Doane*,\* speaking of one who set up the same defence, says: "He voluntarily aids treason. He cannot be permitted to stand on the nice metaphysical distinction that, although he knows that the purchaser buys the

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\* 12 Wallace, 342.

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goods for the purpose of aiding the rebellion, he does not sell them for that purpose. The consequences of his acts are too serious to admit of such a plea. He must be taken to intend the consequences of his own voluntary act." This case, and the succeeding one of *Hanauer v. Woodruff*,\* are directly in point in support of our view of the case before us.

The recognition of the existence and the validity of the acts of the so called Confederate government, and that of the States which yielded a temporary support to that government, stand on very different grounds, and are governed by very different considerations.

The latter, in most, if not in all, instances, merely transferred the existing State organizations to the support of a new and different national head. The same constitutions, the same laws for the protection of property and personal rights remained, and were administered by the same officers. These laws, necessary in their recognition and administration to the existence of organized society, were the same, with slight exceptions, whether the authorities of the State acknowledged allegiance to the true or the false Federal power. They were the fundamental principles for which civil society is organized into government in all countries, and must be respected in their administration under whatever temporary dominant authority they may be exercised. It is only when in the use of these powers substantial aid and comfort was given or intended to be given to the rebellion, when the functions necessarily reposed in the State for the maintenance of civil society were perverted to the manifest and intentional aid of treason against the government of the Union, that their acts are void.†

The government of the Confederate States can receive no aid from this course of reasoning. It had no existence, except as a conspiracy to overthrow lawful authority. Its foundation was treason against the existing Federal government. Its single purpose, so long as it lasted, was to make that treason successful. So far from being necessary to the

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\* 15 Wallace, 439.† *Texas v. White*, 7 Id. 700

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organization of civil government, or to its maintenance and support, it was inimical to social order, destructive to the best interests of society, and its primary object was to overthrow the government on which these so largely depended. Its existence and temporary power were an enormous evil, which the whole force of the government and the people of the United States was engaged for years in destroying.

When it was overthrown it perished totally. It left no laws, no statutes, no decrees, no authority which can give support to any contract, or any act done in its service, or in aid of its purpose, or which contributed to protract its existence. So far as the actual exercise of its physical power was brought to bear upon individuals, that may, under some circumstances, constitute a justification or excuse for acts otherwise indefensible, but no validity can be given in the courts of this country to acts voluntarily performed in direct aid and support of its unlawful purpose. What of good or evil has flowed from it remains for the consideration and discussion of the philosophical statesman and historian.

## JUDGMENT AFFIRMED.

Mr. Justice CLIFFORD and Mr. Justice DAVIS expressed their concurrence in the judgment of the court above announced, solely upon the ground that the purchase of the cotton and the payment of the consideration necessarily tended to give aid to the rebellion, and that all such contracts were void, as contrary to public policy. They stated that all such portions of the opinion as enforced that view had their concurrence, but that they dissented from the residue of the opinion as unnecessary to the conclusion.

Mr. Justice FIELD, dissenting.

I am compelled to dissent from the judgment of the court in this case, and from the reasons stated in the opinion upon which that judgment is founded. The opinion appears to me to proceed upon the assumption that this is an action to enforce a contract which was illegal in its inception, and, therefore, without standing in a court of justice. And the

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cases of *Hanauer v. Doane*, in the 12th of Wallace, and *Hanauer v. Woodruff*, in the 15th of Wallace, are cited in support of the position that contracts of this character will not be upheld. Those authorities do establish the position that contracts entered into for the purpose of aiding the late insurrectionary government are illegal and void, and will not be enforced by the Federal tribunals. In the first case the action was upon two promissory notes, the consideration of which consisted in part of stores and supplies furnished the defendant, an army contractor of the Confederate government, with knowledge that they were to be used in aid of the rebellion, and in part of due-bills issued by the contractor to other parties for similar supplies, and taken up at his request; and the court held that the sale of the goods, being made with the vendor's knowledge of the uses to which they were to be applied, was an illegal transaction and did not constitute a valid consideration for the note of the purchaser, and that the due-bills given by him for similar goods, being taken up by third parties with knowledge of the purpose for which they were issued, were equally invalid as a consideration for his note in their hands. In the second case the action was upon a promissory note, the only consideration of which consisted of certain bonds, issued by the convention of Arkansas which attempted to carry that State out of the Union, and issued for the purpose of supporting the war against the Federal government, and styled "war bonds" on their face, and one of the questions presented for our determination was whether the consideration was illegal under the Constitution and laws of the United States. And the court answered that it did not admit of a doubt that the consideration was thus illegal and void; that "if the Constitution be, as it declares on its face it is, the supreme law of the land, a contract or undertaking of any kind to destroy or impair its supremacy, or to aid or encourage any attempt to that end must necessarily be unlawful and can never be treated, in a court sitting under that Constitution and exercising authority by virtue of its provisions, as a meritorious consideration for the promise of any one."



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In both of these cases the aid of the courts was sought to enforce unexecuted contracts which were illegal and void in their inception, because made in aid of the rebellion, and all that they decide is that contracts of that character can never be enforced in the courts of that government against which the rebellion was raised. In those courts such contracts stand on the same footing as other illegal transactions, they will not be upheld nor enforced. In both of those decisions I concurred, and in the second case I wrote the opinion of the court. I still adhere to the views expressed in both cases.

But, with great respect for my associates, I am compelled to say that, in my judgment, neither of those cases has any just application to the case at bar, or to any question properly involved in its decision. This action is not brought to enforce an unexecuted contract, legal or illegal; there is no question of enforcing a contract in the case. The question, and the only question, is whether the cotton seized by the forces of the United States in May, 1865, was at the time the property of the claimant. If it was his property, then he is entitled to its proceeds, and the judgment of the Court of Claims should be reversed; and in determining this question we are not concerned with the consideration of his loyalty or disloyalty. He was a citizen of Mississippi and resided within the lines of the Confederacy, and the act forbidding intercourse with the enemy does not apply to his case. He was subject to be treated, in common with other citizens of the Confederacy, as a public enemy during the continuance of the war. And if he were disloyal in fact, and if by his purchase of the cotton he gave aid and comfort to the rebellion, as this court adjudges, the impediment which such conduct previously interposed to the prosecution of his claim was removed by the proclamation of pardon and amnesty made by the President on the 25th day of December, 1868. He was included within the terms of that beneficent public act of the Chief Magistrate of the United States, as fully as if he had been specifically named therein. That pardon and amnesty did not, of course, and could not

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change the actual fact of previous disloyalty, if it existed, but, as was said in *Carlisle v. The United States*,\* “they forever close the eyes of the court to the perception of that fact as an element in its judgment, no rights of third parties having intervened.” In legal contemplation the executive pardon not merely releases an offender from the punishment prescribed for his offence, but it obliterates the offence itself.

In the present case, therefore, the question of the loyalty or disloyalty of the claimant is withdrawn from our consideration; and as the non-intercourse act does not apply to his case, it does not concern the United States whether he acquired the property from another public enemy or from one of the States of the Confederacy, or from an agent of the Confederate government. He was in possession of the property at the time of the seizure, asserting ownership to it; and no one then disputed, and no one since has disputed his title. Who then owned the property if he did not? The United States did not own it. They did not acquire by its seizure any title to the property. They have never asserted any greater rights arising from capture of property on land in the hands of citizens engaged in the rebellion than those which one belligerent nation asserts with reference to such property captured by it belonging to the citizens or subjects of the other belligerent. All public property which is movable in its nature, possessed by one belligerent, and employed on land in actual hostilities, passes by capture. But private property on land, except such as becomes booty when taken from enemies in the field or besieged towns, or is levied as a military contribution upon the inhabitants of the hostile territory, is exempt from confiscation by the general law of nations. Such is the language of Mr. Wheaton, who is recognized as authority on all questions of public law. And “this exemption,” he adds, “extends even to the case of an absolute and unqualified conquest of the enemies’ country.”†

In *Brown v. The United States*,‡ the question arose whether

\* 16 Wallace, 151.

† Law of Nations, Lawrence’s edition, 596.

‡ 8 Cranch, 152.

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enemy's property found on land at the commencement of hostilities with Great Britain, in 1812, could be seized and condemned as a necessary consequence of the declaration of war; and the court held that it could not be thus condemned without an act of Congress authorizing its confiscation. The court, speaking through Chief Justice Marshall, said that it was conceded that war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, and observed that the mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, might more or less affect the exercise of this right, but could not impair the right itself. "That," said the court, "remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will." "*But*," added the court, "*until that will shall be expressed, no power of condemnation can exist in the court.*"

It may be doubted whether the right to confiscate property of the enemy wherever found, which is here stated to have been conceded, would at this day be admitted without some qualification excepting private property on land not engaged in actual hostilities or taken as booty, or levied as a military contribution, as stated by Mr. Wheaton. Be that as it may, the decision is emphatic that until Congress by some legislative act directs the confiscation of private property on land, none can be ordered by the courts.\*

Now, Congress has only provided for the confiscation of private property of persons engaged in the rebellion, by the act of August 6th, 1861,† and that of July 17th, 1862.‡ Both of these acts require legal proceedings resulting in a judicial decree of condemnation before the title of the owner can be divested. The present case is not brought under either of these acts. No proceedings for the condemnation

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\* See also instructions of Mr. Adams, when Secretary of State, to our Minister at St. Petersburg, July 5th, 1820, and Halleck, 457; Hefter, § 133; and *United States v. Percheman*, 7 Peters, 51.

† 12 Stat. at Large, 319.

‡ *Ib.* 589.

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and forfeiture of the cotton seized, or of its proceeds, have ever been instituted by the government. The title of the claimant remains, therefore, at this day, as perfect as it did on the day the cotton was seized.

In the case of *The United States v. Klein*,\* this court had occasion to consider the rights of property, as affected by the war, in the hands of citizens engaged in hostilities against the United States, and it held, after mature consideration, that the effect of the act of Congress of March 12th, 1863, to provide for the collection of captured and abandoned property in insurrectionary districts, under which the present action is brought, is not to confiscate, or in any case absolutely divest, the property of the original owner, even though disloyal, and that by the seizure the government constituted itself a trustee for those who were by that act declared entitled, or might thereafter be recognized as entitled to the proceeds.

But it is contended that the Confederate government, being unlawful in its origin and continuance, was incapable of acquiring, holding, or transferring a valid title to the property. The court below so held in terms, and this court so far sustains that ruling as to declare that the claimant could not acquire any title to the cotton seized by purchase from that government.

Assuming that the Confederate government was thus incapable of acquiring or transferring title to property, the result claimed by the attorney-general, and held by the majority of this court, would not, in my judgment, follow. That organization, whatever its character, acted through agents. Those agents purchased and sold property. The title of the vendors passed to somebody; if it did not vest in the Confederate government, because that organization was incapable of taking the property, it remained with the agents. The sale of the vendors was a release and quit-claim of their interest, and when that took place the property was not derelict and abandoned. Whatever title existed to the

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\* 13 Wallace, 136.

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property was, therefore, in the agents if their assumed principal had no existence, and by their sale passed to purchasers from them. Undoubtedly larceny could be alleged against one who feloniously took the property from such purchaser. The taker would not be allowed in any court which administers justice to escape punishment by showing that no title passed to the purchaser because his vendor was the agent, or assumed to be the agent, of a government which had no legal existence. And it is equally clear that the purchaser could have maintained an action for injuries to the property thus purchased, or for its recovery if forcibly removed from his possession by a third party. The plea that the property was not his because obtained from the agent, or a person assuming to be the agent, of an unlawful political organization, would not be held a justification for the injuries or the detention.

But I do not desire to place my objection to the decision of the court upon this view of the case. I place it on higher ground, one which is recognized by all writers on international law, from Grotius, its father, to Wheaton and Phillimore, its latest expounders, and that is, that a government *de facto* has, during its continuance, the same right within its territorial limits to acquire and to dispose of movable personal property which a government *de jure* possesses. And that the Confederate government, whatever its character in other respects, possessed supreme power over a large extent of territory, embracing several States and a population of many millions, and exercised that power for nearly four years, we are all compelled to admit. As stated by this court, speaking through Mr. Justice Nelson,\* it cannot be denied that, by the use of unlawful and unconstitutional means, "a government in fact was erected greater in territory than many of the old governments in Europe, complete in the organization of all its parts, containing within its limits more than eleven millions of people, and of sufficient resources in men and money to carry on a civil war of un-

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\* *Mauran v. Insurance Company*, 6 Wallace, 14.

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exampled dimensions; and during all which time the exercise of many belligerent rights were either conceded to it, or were acquiesced in by the supreme government, such as the treatment of captives both on land and sea as prisoners of war; the exchange of prisoners; their vessels captured recognized as prizes of war and dealt with accordingly; their property seized on land referred to the judicial tribunals for adjudication; their ports blockaded, and the blockade maintained by a suitable force, and duly notified to neutral powers, the same as in open and public war."

In *Thorington v. Smith*,\* this court placed the Confederate government among that class of governments *de facto* of which the temporary governments at Castine and Tampico were examples, and said, speaking through Chief Justice Chase, that "to the extent of actual supremacy, however unlawfully gained, in all matters of government within its military lines the power of the insurgent government cannot be questioned. That supremacy did not justify acts of hostility to the United States. How far it should excuse them must be left to the lawful government upon the re-establishment of its authority. But it made obedience to its authority in civil and local matters not only a necessity, but a duty. Without such obedience civil order was impossible."

With these authorities before me I should unhesitatingly have said—but for the fact that a majority of my associates differ from me, and the presumption is that they are right and I am wrong,—that it was impossible for any court to come to the conclusion that a government thus organized, having such immense resources and exercising actual supremacy over such vast territory and millions of people, did not possess the power to acquire and to transfer the title to personal property within its territorial limits.

Our government in its efforts to reach the property of the extinct Confederacy has asserted a very different doctrine from that announced in the court below, and, so far as the cotton seized in this case is concerned, approved here. It

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\* 8 Wallace, 10.

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has alleged in the courts of England that that Confederacy did acquire property to a vast amount and attempted to reach it in the hands of its agents. In *United States v. McRae*\* it filed a bill in the court of chancery in England to obtain an account of all moneys and goods which came to the hands of the defendant, as agent or otherwise, on behalf of the Confederate government during the insurrection, and the payment of the moneys which, on taking such account, might be in his hands, and a delivery over of the goods in his possession. The bill alleged that the Confederate government possessed itself of divers moneys, goods, and treasure, part of the public property of the United States, and that other moneys and goods were from time to time paid and contributed to it by divers persons, inhabitants of the United States, or were seized and acquired by that government in the exercise of its usurped authority; that it had sent to agents and other persons in England large amounts of money to be laid out in purchasing goods for its use, and had sent there large quantities of goods to be sold; that it had thus sent large sums of money and large quantities of goods to the defendant, and that on the dissolution of that government he had them in his possession. And the bill claimed that all the joint or public property of the persons constituting the Confederate government, including the said moneys and goods, had vested in the United States and constituted their absolute property, and ought to be paid and delivered to them. The court held that the moneys, goods, and treasure which were at the outbreak of the rebellion the public property of the United States, and which were seized by the rebels, still continued the moneys, goods, and treasure of the United States, their rights of property and rights of possession being in no wise divested or defeated by the wrongful seizure. But that with respect to property which had been voluntarily contributed to or acquired by the insurrectionary government, and impressed in its hands with the character of public property, the right of the United

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\* 8 Law Reports, Equity, 69.

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States was that of a successor of the Confederate government; and that they could recover such property from an agent of that government, but subject, however, to the same rights and obligations, to which that government would have been subjected, had it not been overthrown.

In the case of *The United States v. Prioleau*,\* the same court again held that the government of the United States could recover the property of the Confederate government, as its successor or representative in the hands of its agents, but that they must take it subject to all the liens and conditions arising from the contract upon which the property was received by the agents. Neither the United States, in the prosecution of these suits, nor the courts of England in deciding them, expressed the slightest doubt that the title to the property, not originally owned by the United States, had been acquired by the Confederate government, which was in the hands of its agents. And I submit that a response by those courts to the claim of the United States, that the insurgent government, being illegal in its origin and continuance, could neither take, hold, nor transfer title to personal property, would not have been acquiesced in, nor deemed respectful by our government. And I submit respectfully that the earnest denunciation of the wickedness of the rebellion, contained in the opinion of the majority, is no legal answer to the demand of the claimant for the proceeds of his property seized and sold by our government, when that government long since pardoned the only offence of which that claimant was guilty, and thus gave him the assurance that he should stand in the courts of his country in as good plight and condition as any citizen, who had never sinned against its authority.

I am, therefore, of opinion that the judgment of the Court of Claims should be reversed.

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\* 2 Hemming & Miller's Chancery Cases, 559.